

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3905 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge? : NO

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SOMJIBHAI PREMJBHAI PARMAR

Versus

EXECUTIVE ENGINEER (CIVIL)  
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Appearance:

MR JA SHELAT for Petitioner  
MR A.J.DESAI Asst. Govt. Pleader  
MS SEJAL K MANDAVIA for Respondent No. 1  
M/S PATEL ADVOCATES for Respondent No. 3  
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CORAM : MR.JUSTICE J.M.PANCHAL

Date of decision: 18/02/2000

ORAL JUDGEMENT

#. By filing this petition under Article 226 of the  
Constitution, the petitioner has prayed to issue a writ  
of mandamus or a writ of certiorari or any other

appropriate writ or order directing the respondent to regularize his services. The petitioner has further prayed to direct the respondent to treat him in continuous service of the respondent, from the date of initial appointment as clerk cum typist. The petitioner has also prayed to declare that action of respondent in giving artificial breaks in the service is illegal and that the petitioner continues to be in service for all purposes from his initial date of appointment as clerk cum typist.

#. The Gujarat Maritime Board had set up a project for Development of Pipavav Port as an All weather Port in the Dist. of Amerli. For preliminary investigation and preparation of initial estimates, posts for one Division were approved for a period of one year under Gujarat Maritime Board order No.E/5/290 dtd.6.7.1984 and even No.2153 dtd.24.1.1985. Initially, the full staff for the Division Office was not posted and therefore it had become necessary to recruit some staff on a purely temporary basis. Accordingly the petitioner was appointed as a clerk cum typist for a period from 26.11.1984 to 24.12.1984 against the vacant post sanctioned under the above referred to orders. The said appointment order which is produced by the petitioner at Annexure A to the petition clarifies that the services of the petitioner were liable to be terminated without giving any notice. The recruitment on the post of typist, clerk cum typist etc, is being made by the head of the department i.e. by the Chief Executive officer and Vice Chairman, Gujarat Maritime Board. Since such recruitments were not made, services of the petitioner were continued by the office of the respondent no.1 till July 29, 1985 by different orders, particulars of which are given in para 5.1 of the affidavit in reply filed by Mr.V.S.Desai, Executive Engineer (Civil) Gujarat Maritime Board, Pipavav Development Project, Division No.1 Mahuva. The petitioner was employed as a daily wager on nominal Muster Roll as a typist for the period from 1.8.85 to 30.9.1985 and as a cleaner for the period from 2.10.85 to 7.2.86. The petitioner was thereafter employed as a Mechanic since he had undergone the course of truck driver cum repairer of Technical Examination Board, Gujarat State at Bhavnagar in December, 1982. The details of the said employment are also given in para 5.1 of the affidavit in reply. This petition is filed by the petitioner on the basis that the petitioner was given 29 days appointment regularly, but the averments made in reply affidavit make it manifest that the petitioner was not given 29 days appointment regularly. The power to make regular appointment to the posts of clerks, typists

and clerk cum typist rests with the Chief Executive Officer and Vice Chairman and therefore the Executive Engineer (Civil) at Pipavav had no power to give any such regular appointment to the petitioner. In order to make appointment on temporary basis, the employment exchange Bhavnagar was requested to forward the name of the candidates as per the letter dtd.24.9.85 which is produced at Annexure II to the reply affidavit. In the said requisition also it was specifically stated that the appointments were going to be made on temporary basis. In the meanwhile regular appointment against other posts were made by the Chief Executive Officer and Vice Chairman, Gujarat Maritime Board. The respondent no.1 had constituted a committee consisting of three Senior Executive Engineer in Division I as well as in Division No.2 of the Pipavav Port Development Project which had selected the petitioner. However, the procedure which was followed by the committee was only for making appointment on temporary basis because the power to appoint a clerk cum typist or typist on long term/permanent basis is within the purview of the Head Office. The office of the respondent no.1 had made it very clear at the time of making initial appointment of the petitioner that the appointment was made on purely temporary basis and even the requisition to the employment exchange office at Bhavnagar through letter dtd.24.9.85 also made it clear that the appointments were to be made on temporary basis. The petitioner had knowing full well that the appointment was temporary had accepted the same. Under the circumstances the claim of the petitioner that the respondents should be directed to regularise his services cannot be entertained. In this case the post was not filled in by the Head Office on the regular basis but the petitioner was appointed purely on temporary basis, looking to the administrative exigency prevailing then, from time to time. It is well settled that prayer to regularise service cannot be granted unless certain conditions are satisfied. In such matters the courts are expected to act with due care and caution while considering the request for issuance of direction for regularisation of service. Though initially the respondents were restrained from terminating services of the petitioner only on the basis of 29 days appointment, later on liberty was reserved to the respondent to terminate the services of the petitioner in accordance with the law. Learned counsel for the respondent no.1 and 2 has produced an order dtd.13.11.89 issued by the Chief Executive Officer and Dy. Chairman of the Gujarat Maritime Board, which shows that the petitioner was appointed as Telex Operator on temporary basis on probation for a period of one year. The said office

order is ordered to be taken on the record of the petition. The learned counsel for the respondent no.1 and 2 further states that thereafter the service of the petitioner have been regularized and he is in service of Gujarat Maritime Board, but he is not given seniority from the date of his initial appointment as clerk. It is relevant to notice that the petitioner has accepted this new appointment and has not made any grievance about seniority etc, by way of seeking permission to amend the petition. Therefore, though the petition has become infructuous, in view of the different averment made in the petition, the question whether the petitioner was entitled to be regularised in service from the date of his initial appointment is considered by me. Having regard to the facts of the case, I am of the opinion that no case is made out by the petitioner for grant of any of the reliefs claimed in the petition and petition is liable to be dismissed.

#. For the foregoing reasons the petition fails and is dismissed. Rule is discharged with no order as to costs. Ad interim relief granted earlier is vacated.

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